Crl.A. 338/2003

BEFORE

HON'BLE MR JUSTICE P.G.AGARWAL

Heard Mr.S.C.Biswas, learned counsel for the appellant and Mrs. A.Begum, learned P.P., Assam.

This appeal is directed against the judgment and order dated 18.09.2003 passed by the learned Sessions Judge, Kokrajhar convicting the accused appellants Ainuddin, Omar Uddin, Nanur Uddin and Surat Zamal guilty under Section 366(A) and sentencing them to undergo rigorous imprisonment for seven years and to pay fine of Rs.1000/- each, in default in payment of fine, to undergo further imprisonment for one month each. The accused appellant Mafizuddin was convicted under Section 366(A)/376 IPC and sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs.2000/-, in default in payment of fine, to undergo imprisonment for three months under Section 376 IPC and further to suffer rigorous imprisonment for 7 years under Section 366(A) IPC. Both the sentence is to run concurrently.

In the present case, we find that the prosecution had examined as many as seven witnesses, out of them two are official witnesses i.e. the I.O. and the Medical Officer. We also find that in the present case, the alleged victim Fazar Zan could not be examined as she died on illness before the trial could commence. Out of the five un-official witnesses, PW-6 had no knowledged about the incident. PW-1 is the father of the victim, whereas PW-2 is the brother-in-law of PW-4 and brother of the victim. They were not present in the house when the incident of kidnapping took place. They claim to have been reported about the incident by Smti Sheikh Jan Bibi (PW-3), the mother of the deceased (victim). It is seen that during trial, the mother of the victim (PW-3) turned hostile and she was declared hostile. The PW-3 has not named any of the accused person. We thus find that there is no evidence on record implicating the accused persons in the matter of kidnapping or implicating Mafizuddin in committing rape on the girl. It seems that the learned trial Court acted on surmise and conjectures to convict the accused appellants, although this is a case of no evidence. A criminal trial cannot proceed on such surmise.

Admitted, in the present case, none of the prosecution witnesses implicated the accused persons. The evidence of PW-1, PW-2 and PW-4 becomes here-say evidence in the light of the testimony of PW-3 which has got no evidentiary value.

In the result, the appeal is allowed. The impugned order of conviction and sentence is set asid. The accused appellants are acquitted. They be released forthwith, if not wanted in connection with any other case.

Send down the records.